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October 18, 2018

OCT 26 2018

VIA CERTIFIED U. S. MAIL
RETURN RECEIPT REQUESTED

David Boesch, Interim City Manager
City of Half Moon Bay
501 Main Street
Half Moon Bay, CA 94019

John Doughty, Public Works Director
City of Half Moon Bay
501 Main Street
Half Moon Bay, CA 94019

Maziar Bozorginia, City Engineer/Legally
Responsible Official
City of Half Moon Bay
501 Main Street
Half Moon Bay, CA 94019

Re: Notice of Violations and Intent to File Suit Under the Clean Water Act

Dear David Boesch, John Doughty and Maziar Bozorginia:

This firm represents the Ecological Rights Foundation (“ERF”) in regard to violations of the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.* (“Clean Water Act” or “CWA”) caused by the City of Half Moon Bay’s (the “City”) failure to comply with Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a).

As required by the Clean Water Act, ERF puts the City on formal notice that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent To File Suit Letter (“Notice Letter”), ERF intends to file suit in Federal District Court pursuant to Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a), against the City for the violations described in this Notice Letter.

Section 505(b) of the Clean Water Act, 33 U.S.C. § 1365(b), requires that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a), a citizen must give notice of his/her intention to file suit. Notice must be given to the owner or managing agent of the facility responsible for the violations, the Administrator of the United States Environmental Protection Agency (“EPA”), the Regional Administrator of the EPA, and the Executive Officer of the State of California’s State Water Resources Control Board (“State Board”). *See* 40 C.F.R. § 135.2.

ERF intends to file suit to seek injunctive relief pursuant to CWA Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), declaratory relief, and such other relief permitted by law to

remedy the CWA violations outlined below and specified in Exhibit A hereto. ERF will also seek civil penalties pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the EPA Regulation, Adjustment of Civil Monetary Penalties for Inflation, set forth at 40 C.F.R. § 19.4 (2009) for such CWA violations not addressed by any prior or current administrative penalty under 33 U.S.C. § 1319(g).

These provisions authorize civil penalties for each separate violation of the Clean Water Act of up to \$37,500 per day per violation for all Clean Water Act violations occurring after January 12, 2009, and up to \$53,484 per day per violation for all violations occurring after November 2, 2015. Finally, ERF will seek to recover its litigation costs, including attorneys' and experts' fees, pursuant to CWA Section 505(d), 33 U.S.C. § 1365(d).

I. ORGANIZATION GIVING NOTICE OF CLEAN WATER ACT VIOLATIONS

ERF is a non-profit public benefit corporation dedicated to the preservation, protection and defense of the environment, wildlife and natural resources of California waters, including Half Moon Bay and the Pacific Ocean at Venice Beach. ERF's offices are located 867 B Redwood Drive, Garberville, California 95542.

ERF's members use and enjoy Half Moon Bay and the Pacific Ocean (including but not limited to Venice Beach) for fishing, boating, swimming, picnicking, viewing wildlife, and engaging in scientific study. Information available to ERF indicates that the City discharges raw and/or inadequately treated sewage into Half Moon Bay and the Pacific Ocean, both waters of the United States. These discharges of sewage and associated pollutants degrade water quality and harm aquatic life in these waters, and thus impair ERF's members' use and enjoyment of these waters. Further, the City's discharges of raw and/or inadequately treated sewage are ongoing and continuous. As a result, ERF's members' use and enjoyment of these waters has been and continues to be adversely impacted by the discharges of sewage to waters used and enjoyed by ERF's members.

II. THE ENTITY RESPONSIBLE FOR THE ILLEGAL DISCHARGES

Information available to ERF indicates that the City owns and operates a wastewater collection system. The City provides wastewater collection services to approximately 13,000 residents in the City of Half Moon Bay, in the portion of the City that is located south of Frenchman's Creek and north of Miramontes Point Road. The City contracts the day-to-day operation and maintenance of the wastewater collection system to the Sewer Authority Mid-Coastside ("SAM"). The City's collection system directs sewage to SAM's wastewater treatment plant located at 1000 North Cabrillo Highway in Half Moon Bay. The City's wastewater collection system includes approximately 35 miles of gravity sewer pipe and 1.5 miles of force main pipeline, as well as three lift stations. The City's system conveys approximately 0.7 million gallons per day of average dry weather flow to the SAM wastewater treatment plant.

The City's Waste Discharge Identification Number for the California Integrated Water Quality System is 2SSO10139. The City is subject to the State Water Resources Control Board Order No. 2006-0003-DWQ and the Amended Monitoring and Reporting Program Order No. WQ 2013-0058-EXEC.

III. THE LOCAL WATERWAYS RECEIVING THE ILLEGAL DISCHARGES OF POLLUTANTS AND THE ENVIRONMENTAL IMPACTS FROM THOSE DISCHARGES

A. The Receiving Waters

Sanitary Sewer Overflows ("SSO") from the City's collection system reach Half Moon Bay and the Pacific Ocean (collectively "the Receiving Waters"). Half Moon Bay provides habitat to many species of aquatic wildlife, including the federally threatened western snowy plover. Half Moon Bay and its tributaries provide habitat for aquatic species, as well as opportunities for wildlife viewing, fishing, and other water-related recreation such as swimming, wading and boating. Other sensitive, threatened and endangered species, including, but not limited to, the California red-legged frog, Coho salmon, San Francisco Garter Snake, Steelhead trout, Tidewater goby, and the western pond turtle, are known to occur in the watershed that flows into Half Moon Bay.

According to the State of California, the beneficial uses of the water bodies in the Pacific Ocean and Half Moon Bay watershed include agricultural water supply, municipal and domestic supply, cold freshwater habitat, migration of aquatic organisms, rare, threatened, or endangered species, spawning, reproduction, and/or early development, warm freshwater habitat, water contact recreation, and non-contact water recreation.¹ The Pacific Ocean at Venice Beach (south of Frenchman's Creek) is listed on the State of California's 2014 and 2016 integrated report Clean Water Act Section 303(d) list of impaired water bodies as impaired for Indicator Bacteria.²

Many of the pollutants found in raw and inadequately treated sewage are toxic. By discharging raw and/or inadequately treated sewage and its associated pollutants to waters of the United States in violation of the Clean Water Act, the City has contributed, and continues to contribute to the impairment of the Pacific Ocean at Venice Beach. The City's violations of the Clean Water Act directly harm ERF's members' use and enjoyment of the Receiving Waters.

B. Pollutants in Sewage and Their Impacts to the Environment and Human Health

Raw and/or inadequately treated sewage harms the Receiving Waters and poses a serious risk to fisheries, wildlife habitat, and human health. Sewage contains human waste, viruses,

¹ See Table 2-1, Water Quality Control Plan, San Francisco Bay Region.

² See https://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2014_2016.shtml. A water body that is listed as impaired cannot support its designated beneficial uses.

protozoa, mold spores and bacteria. In addition, raw and/or inadequately treated sewage contains chemicals that cause cancer or reproductive toxicity. These chemicals come from solvents, detergents, cleansers, inks, pesticides, paints, pharmaceuticals, and other chemicals used by households and businesses and discarded to sewage collection systems. High concentrations of these pollutants are typically found in raw and/or inadequately treated sewage. SSOs from the the City's collection system result in the addition of these pollutants to the Receiving Waters.

SSOs also affect people who eat fish caught in the Receiving Waters. Toxic chemicals bio-accumulate in the Receiving Waters' food web, as contaminants absorbed by plankton accumulate in fish and birds farther up the food chain, and ultimately transfer to human consumers. Contamination of fish is particularly harmful to people who eat an above-average amount of local fish.

IV. THE CITY'S DISCHARGES OF SSOs FROM ITS COLLECTION SYSTEM VIOLATE THE CLEAN WATER ACT

The Clean Water Act prohibits the discharge of pollutants except as in compliance with a permit. 33 U.S.C. § 1311(a). The Clean Water Act is administered largely through the National Pollutant Discharge Elimination System ("NPDES"). 33 U.S.C. § 1342. In California, the federal NPDES program has been delegated to the state. 33 U.S.C. § 1342(b). California elected to manage SSOs using Waste Discharge Requirements ("WDR") because not all sewers were designed to discharge to surface waters. *See* Order No. 2006-0003-DWQ Fact Sheet at 3.

The City does not operate its collection system pursuant to any NPDES permit because it is not intended to discharge to waters of the United States. Instead, the City's collection system is designed to direct sewage to SAM's wastewater treatment plant, and the City's collection system operates under the statewide Waste Discharge Requirement Order No. 2006-0003-DWQ. Therefore, SSOs from the City's collection system to waters of the United States, including but not limited to those specified in Exhibit A hereto, are discharges of pollutants without a permit in violation of the Clean Water Act.

ERF believes that additional information will be discovered that indicates that the City has not reported each and every SSO from its collection system or has misreported SSOs occurring within the last five (5) years. Moreover, ERF believes that the City lacks an adequate monitoring program to detect, report, and address SSOs and their impacts. Thus, ERF believes that SSOs in addition to those identified in Exhibit A will be discovered through this enforcement action. ERF puts the City on notice that all SSOs from the City's collection system occurring in the last five (5) years, whether specifically reported or not, as well as any future violations, will be included in this litigation.

Each day between October 18, 2013 and October 18, 2018 that the City has discharged raw and/or inadequately treated sewage from its collection system is a separate and distinct violation of Section 1311(a) of the Clean Water Act. The City's violations will continue each day it discharges SSOs that reach waters of the United States. The City is subject to penalties for

all violations of the Clean Water Act occurring in the five (5) years prior to the date of this Notice Letter.

I. CONCLUSION

ERF has retained legal counsel to represent it in this matter. Please direct all communications to the attorneys at the addresses/numbers below:

Andrew L. Packard
William N. Carlon
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245 Kentucky Street, Suite B3
Petaluma, CA 94952
(707) 782-4060
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Brian Gaffney
Law Offices Of Brian Gaffney APC
446 Old County Road, Suite 100-310
Pacifica, CA 94044
(650) 219-3187
brian@gaffneylegal.com

Upon expiration of the 60-day notice period, ERF will file a citizen suit enforcement action pursuant to Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a), for the above-referenced violations. During the 60-day notice period, however, ERF is willing to discuss effective remedies for the violations noted in this letter. If the City wishes to pursue such discussions prior to the initiation of litigation, we suggest that it initiate those discussions immediately.

Sincerely,



Andrew L. Packard
Counsel for Ecological Rights Foundation

cc: James Lamport, Executive Director, Ecological Rights Foundation

SERVICE LIST

VIA CERTIFIED MAIL

Scott Pruitt, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Alexis Strauss, Acting Regional Administrator
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Jeff Sessions, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Eileen Sobeck, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812

Bruce H. Wolfe, Executive Officer
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

EXHIBIT A

EVENT ID	Collection System	Start Date	SSO Address	SSO City	SSO Vol	Vol of SSO Recovered	Vol of SSO Reached Surface Water	SSO Failure Point
803996	Half Moon Bay CS	2/17/2014	507 Terrace Avenue	Half Moon Bay	2063	0	2063	Gravity Mainline
811604	Half Moon Bay CS	12/11/2014	751 First Avenue	Half Moon Bay	99850	0	99850	Manhole
831439	Half Moon Bay CS	1/4/2017	220 Kelly Avenue	Half Moon Bay	1125	0	1125	Gravity Mainline
833893	Half Moon Bay CS	3/21/2017	212 Kelly Street	Half Moon Bay	300	200	100	Lower Lateral (Public)
840818	Half Moon Bay CS	10/11/2017	Behind 70 N. Cabrillo	Half Moon Bay	6158	2020	225	Gravity Mainline
841984	Half Moon Bay CS	12/1/2017	1 Miramontes Point Road	Half Moon Bay	900	200	700	Pump Station-Controls